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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,636	08/07/2002	Henri Samain	05725.1038	7407

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EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/088,636	Applicant(s) SAMAIN, HENRI	
	Examiner Eisa B Elhilo	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

- 1 This action is responsive to the amendment filed on October 12, 2004.
- 2 The cancellation of claims 1-19 is acknowledged. Pending claims are 20-49.
- 3 The rejection of claims 1-19 is withdrawn because of the applicant's amendment.

NEW GROAUND OF REJECTION

Claim Rejections - 35 USC § 103

- 4 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20-34 and 36-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dubief et al. (WO 97/14400). The US. Patent No. 6,368,606 B1 is used in this action as English translation of the PCT WO 97/14400.

Dubief et al. (US' 606 B1) teaches a hair cosmetic composition comprising insoluble polymer particle having less than 500 nm and a glass transition temperature between -30°C . and 90°C . (see col. 4, lines 22-25) wherein the polymer is anionic polymer and is presented in the amount of 0.1 to 50% by weight of the composition (see col. 5, lines 63-67), wherein the percentage weight, size and the temperature of the polymer particle are overlapped with the claimed ranges as claimed in claims 20-27. The composition further comprises acceptable medium comprising organic solvents of lower alcohols such as ethanol as claimed in claim 33 (see col. 6, lines 1-5), at least one additive such as thickening agents and propellant as claimed in claims 34 and 37 (see col. 6, lines 14-20 and line 54), anionic silicone copolymer as claimed in

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claim 36 (see col. 2, lines 46-56), wherein the composition can be packaged in aerosol form as claimed in claim 45 (see col. 6, lines 52-59). Dubief et al. (US' 606 B1) also teaches a process for treating hair, which comprises applying to the hair, the composition as described above and wherein the process is similar to those as claimed in claims 46-49 (see col. 6, lines 60-64).

The instant claims differ from the reference by reciting the thickness of the platelets (polymers).

However, the reference teaches a cosmetic composition comprising a copolymer of styrene and alkyl (meth)acrylate (Mowilith LDM 6070) (see col. 5, lines 23-25).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate a hair cosmetic composition having a copolymer with the claimed thickness because the reference teaches the same copolymer that used by the applicant (see page 13 of specification of the instant invention, lines 10-15), and, thus, a person of the ordinary skill in the art would expect such a copolymer (Mowilith LDM 6070) to have similar physical properties to those claimed including the thickness of the copolymer and would expect such a composition to have similar properties to those claimed, absent unexpected results.

With respect to claims 28-32 and 42-44, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate a cosmetic composition comprising a copolymer (platelet) having a reflectivity and layers having different refractive indices as claimed because the reference teaches the same copolymer of styrene and alkyl (meth)acrylate (Mowilith LDM 6070) as described above and, thus, a person of the ordinary skill in the art would expect such a copolymer (Mowilith LDM 6070) to have similar physical

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properties to those claimed including reflectivity ranges as claimed and would expect such a composition to have similar properties to those claimed, absent unexpected results.

5 Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dubief et al. (WO 97/14400) in view of Lang et al. (US 5,985,253). The US. Patent No. 6,368,606 B1 is used in this action as English translation of the PCT WO 97/14400.

The disclosure of Dubief et al. (US' 253) as summarized above, does not teach or disclose a reducing agent in the cosmetic composition.

However, the reference teaches that the composition may contain any additive conventionally used in the cosmetic field (see col. 6, lines 19-20).

Lang (US' 253) in analogous art of hair treating formulation teaches a composition comprising a mixture of reducing agents such as mercaptoethylamines and thiols (see col. 2, lines 44-49). It is further taught by Lang (US' 253) that the reducing agent provide strong and great shaping power (see col. 1, lines 60-65).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Dubief et al. by incorporating the reducing agents as taught by Lang et al. Such a modification would be obvious because the primary reference of Dubief et al. suggests the addition of conventional additives in the composition. Lang et al. as a secondary reference clearly teaches the benefits of using the reducing agents in the hair treating composition, and, thus, a person of the ordinary skill in the art would be motivated to incorporate the reducing agents in the cosmetic composition with the reasonable expectation of success for increasing the shaping power of the

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composition and would expect such a composition to have similar properties to those claimed, absent unexpected results.

Further, the court has held that compositions are indefinite for being defined in terms of properties alone. *Ex parte Spacht* 165 USPQ 409 (PO BdPatApp 1969); *Ex parte Slob* 157 USPQ 172 (PO BdPatApp 1967); *Ex parte Pulvari* 157 USPQ 169 (PO BdPatApp 1966).

6 Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
December 22, 2004



MARGARET EINSMANN
PRIMARY EXAMINER
GROUP 1100